

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

SMOKEY FERNANDEZ,

Petitioner,

v.

JASON BENNETT,

Respondent.

CASE NO. 3:23-cv-05582-JCC-BAT

**ORDER LIFTING STAY
PETITIONER TO SUBMIT STATUS
REPORT**

Before the Court is Petitioner's motion to lift the stay of proceedings in this federal habeas corpus matter. Dkt. 20.

Petitioner initiated this action on June 29, 2023, when he filed a *pro se* 28 U.S.C. § 2254 petition seeking relief from his 2020 conviction and sentence for Child Molestation in the First Degree in Clark County Case No. 18-1-03044-06. As grounds for relief, Petitioner contended there was insufficient evidence to support his conviction; the prosecutor's misconduct denied him a fair trial; the prosecutor violated the "code of judicial misconduct"; "and Defining sexual contact in this case."

Because Petitioner averred state collateral review was still pending, the Court granted his request to stay and abey his federal petition until state court proceedings were finalized and directed Petitioner to file reports to keep the Court informed of the status of state proceedings.

1 On October 4, 2024, Petitioner moved to lift the stay of proceedings, and attached the
2 Washington Supreme Court's June 27, 2024, ruling denying review of the Washington Court of
3 Appeal's dismissal of Petitioner's state post-conviction petition. Dkt. 20.

4 Respondent filed a response to this motion indicating he: (1) has not yet answered
5 Petitioner's original habeas petition filed on July 28, 2023, Dkt. 8; (2) interprets Petitioner's
6 motion to lift the stay as also a motion to amend the original habeas petition filed at Dkt. 18; (3)
7 does not object to lifting the stay or permitting Petitioner to file an amended habeas petition; and
8 (4) does not represent, at this point, Petitioner has properly exhausted his state court remedies or
9 that any new claim is timely under the federal statute of limitations, and also does not waive any
10 defense based upon exhaustion, procedural bar or the statute of limitations. Dkt. 21 at 2.

11 The Court has reviewed the parties' pleadings and the record in this case and **ORDERS:**

12 1. The Court **GRANTS** the motion to lift the stay in this case. Dkt. 20.

13 2. Any amended habeas petition that Petitioner seeks to file must be filed no later
14 than **November 8, 2024**. The amended habeas petition will completely replace the original
15 habeas petition that was filed on July 28, 2023, Dkt. 8. As such, Petitioner shall place all claims,
16 facts and arguments in support of the claims in the amended habeas petition order to provide
17 Respondent notice of all claims and arguments.

18 3. If Petitioner does not intend to file an amended complaint, he should advise the
19 Court immediately. This case will then proceed based upon the claims raised in the original
20 habeas petition, only. Petitioner has also filed a motion to amend his arguments to the habeas
21 petition he filed in July 2023, Dkt. 18. The Court views this motion as containing supportive
22 arguments, only, and not new claims to be inserted into the original habeas petition. If Petitioner
23

1 seeks to add new claims to his original habeas petition, he shall file an amended habeas petition
2 no later than **November 8, 2024**.

3 4. Respondent shall file an answer and the relevant state court record with **49 days**
4 of the date Petitioner has either filed an amended habeas petition or indicates he will not file an
5 amended petition and intends to proceed only on the claims raised in his original habeas petition.

6 5. Any response Petitioner wishes to file to the answer shall be filed no later than **35**
7 **days** after the answer is filed, and the Court will note the matter as ready for consideration **7**
8 **days** later.

9 5. The Clerk shall provide a copy of this Order to the parties.

10 Dated this 11th day of October, 2024.

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BRIAN A. TSUCHIDA
United States Magistrate Judge